their meaning in terms free from all ambiguity. The original act required such absence to continue for five years, and this period, the legislature, in 1844, thought proper to abridge, but it is not manifest they intended to dispense with it altogether.

It has been asked, why it was put in the original act? This is a question which this court cannot answer, but finding it there, it must pay respect to it, as one of the circumstances constituting cause for a divorce a vinculo matrimonii, until the authority which placed it there strikes it out, which I am not satisfied, entirely, they intended to do, by the act of 1844.

This construction of these acts, seems to me, in conformity with what I understand to be the opinion delivered by one, at least, of the judges of the Court of Appeals, in the case of Benguyn vs. Benguyn, decided at December term, 1845, and the opinions of the other judges, do not, in any manner, conflict with it.

The party complained against, then, in this case, not having been absent from the state for any period, it may be doubted, whether, upon the true construction of the acts of assembly upon the subject, an absolute divorce could be decreed.

There is, however, another objection to the interposition of the court in this case, which renders it unnecessary to place the decree about to be passed, upon the ground that the facts alleged, and proved, do not bring this case within the provisions of the acts. The parties, we have seen, on the 18th of April last, executed a deed of separation, by which, provision was made for the support of the wife and children, and by which, these parties mutually agreed, during their joint lives, to live separate and apart from each other. This deed, so long as the terms of it are complied with on the part of the husband, exonerates him from the obligation to support his wife, and is a protection against any claim which can be made upon him for supplying her, even with necessaries. 2 Kent's Com., 161; Todd vs. Stokes, 1 Salk., 116; Nurse vs. Craig, 5 Bos. & Pul., 148; Baker vs. Barney, 8 Johns. Rep., 77.

Having selected their own remedy by the execution of this deed, after the actual separation had lasted nearly or quite ten